No. 494

In the Supreme Court of the United States

OCTOBER TERM, 1940.

THE UNITED STATES OF AMERICA, PETITIONER

v.

JOSEPH T. RYERSON AND EDWARD L. RYERSON, JR., AS EXECUTORS OF THE ESTATE OF MARY M. RYERSON

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT

BRIEF FOR THE UNITED STATES

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OPINIONS BELOW

The opinion of the District Court (R. 61–71) is reported in 28 F. Supp. 265. The opinion of the Circuit Court of Appeals (R. 90–97) is reported at 114 F. (2d) 150.

JURISDICTION

The judgment of the Circuit Court of Appeals was entered on July 9, 1940 (R. 98). The petition for a writ of certiorari was filed October 9, 1940, and was granted November 12, 1940. The juris-

diction of this Court rests upon Section 240 (a) of the Judicial Code, as amended by the Act of February 13, 1925.

QUESTION PRESENTED

Where single premium policies of life insurance are irrevocably assigned several years after issuance, is the value thereof for gift-tax purposes the cost of obtaining like policies on the life of a person the age of the insured or the cash surrender value of the policies in the hands of the donees at the date of the gift?

STATUTE AND REGULATIONS INVOLVED

The pertinent provisions of the statute and regulations involved are set forth in the Appendix to the Government's brief in *Guggenheim* v. *Rasquin*, No. 92, to be argued herewith.

STATEMENT

The relevant facts, as stipulated (R. 38–40) and as found by the District Court (R. 71–74), may be summarized as follows:

In 1928 and 1929, the taxpayer[1] purchased two single premium insurance policies on her own life in the face amount of $100,000 each (R. 71). Taxpayer was 72 years old when the first policy was

[1] The taxpayer died during the pendency of the appeal to the Circuit Court of Appeals. The respondents herein, as executors of her estate, have been substituted as parties (R. 88–89).

issued and 73 when the second was issued (R. 38, 39, 41, 45, 51, 58). In December 1934, when the taxpayer was 79 years old, she had each of the policies divided into two fully paid up policies, each in the amount of $50,000 (R. 38, 71).

In December 1934, the taxpayer assigned one of the policies to one individual, a second to another individual, a third to trustees under a trust agreement, and a fourth to other trustees under another trust agreement (R. 71–72). These assignments were subject to the gift tax (R. 71–72, 79).

The aggregate cash surrender value of the four policies on the dates they were assigned as gifts was $161,965 (R. 72). The insurance company which issued the policies, if it had written similar policies on the date of assignment, on the life of a person of the then age of the taxpayer, would have charged $42,856.50 for each policy, or an aggregate of $171,426 for the four policies (R. 72).

In the computation of the taxpayer's gift tax liability for 1934, she reported the assignment of these policies as gifts in the amount of their cash surrender value at the time of the assignment, or an aggregate of $161,965. In the final determination of the taxpayer's gift tax liability for 1934, the Commissioner of Internal Revenue increased the value of the gifts of the policies to $171,426, or the cost of acquiring similar policies on the life of a person the age of the taxpayer on the date of assignment (R. 72, 73).

Payment was made of the resulting deficiency in gift tax for 1934, and of a deficiency in gift tax for 1935 based on the adjustment of net gifts subject to tax for 1934 (R. 73). This suit was brought for the recovery of these amounts.

The court below, reversing the District Court, held that the cash surrender value of the policies on the date of the gift was to be used in determining the amount of the gift (R. 90–94).[1]

SPECIFICATION OF ERROR TO BE URGED

The Circuit Court of Appeals erred in holding that the tax on the gifts of the insurance policies here involved was to be based on the cash surrender values on the date of the gifts and not on the cost of obtaining like policies on the life of a person the then age of the insured.

ARGUMENT

In December 1934, the taxpayer, then aged 79, made transfers by gift of certain single premium insurance policies purchased on her own life during 1928 and 1929. The sole question presented is whether the "value" thereof for gift tax purposes shall be considered the cash surrender value of the policies in the hands of the donees ($161,965) or the cost of purchasing similar policies on the life

[1] The second question before the Circuit Court of Appeals relating to the number of $5,000 exclusions allowable under Section 504 (b) of the Revenue Act of 1932 is presented for review in No. 495, present Term.

of a person the age of the taxpayer at the date of the gifts ($171,426).

This case differs from *Guggenheim* v. *Rasquin*, No. 92, only in that the premiums here were paid in advance of the gifts. The difference, we submit, should not be material.

1. Article 19 (9) of Regulations 79 (1936 Ed.) is in terms fully applicable to a gift of a single premium life insurance policy whether (as here) the gift is made subsequent to issuance or whether (as in the *Guggenheim* v. *Rasquin*, No. 92) the gift is made simultaneously with issuance.[3] The reasons for regarding these regulations as conclusive as to the proper method of valuing such policies for gift tax purposes are set forth in our brief in the *Guggenheim* case. These reasons, to which we respectfully refer the Court, are equally applicable here.

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[3] Art. 19 (9), Regs. 79 (1936 Ed.), states:

"The value of a life insurance contract or of a contract for the payment of an annuity issued by a company regularly engaged in the selling of contracts of that character is established through the sale of the particular contract by the company, or through the sale by the company of comparable contracts."

* * * * *

"*Example:* A donor owning a life insurance policy on which no further payments are to be made to the company (e. g., a single premium policy or paid-up policy) makes a gift of the contract. The value of the gift is the amount which the company would charge for a single premium contract of the same specified amount on the life of a person of the age of the insured."

It may be noted, in addition, that the application of the 1936 Regulations in a case such as the one at bar results in placing a *minimum* value upon the gift. This is so because the health of the insured, at date of the gift, may have become so impaired that insurance on his life could be obtained only at a materially increased price or not at all. The value of a paid-up policy upon the life of the insured, in such event, would in fact be worth considerably more than the value of a similar policy upon the life of a healthy person the same age at the date of the gift.

2. As stated in our brief in the *Guggenheim* case, the 1933 Regulations were never intended to be applicable to gift transactions involving single-premium or paid-up policies. It is possible, however, to apply them literally, and the result in such event would be approximately the same as under the later regulations.

Article 2 (5) of the 1933 Regulations requires that the prepaid insurance adjusted to the date of the gifts be added to the cash surrender value. The total premiums were paid in 1928 and 1929 for insurance covering the life of the donor. This was "prepaid insurance" within the meaning of Article 2 (5) because a portion of the premiums was paid for insurance coverage after the dates of the gifts. Accordingly, it is necessary under the regulations to adjust the premium payment to the dates of the gifts.

The adjustment consists (1) of eliminating from the premiums the amount of the cash-surrender value created by the premium payment; and (2) deducting the premium earned prior to the gift date.[4] The gifts were made on December 18, 1934, and December 26, 1934, while the policies were issued February 27, 1928, and January 5, 1929. The amount of the premium allocable to the period prior to the gifts represents the premium already earned. The insurance covers the remaining period of the donor's life, but this factor may be supplied by the mortality tables.[5] The amount of the cash surrender value plus the adjusted premium gives the value which must be used under the 1933 Regulations.

The complicated nature of these calculations supports the view that the 1933 Regulations were never intended to be applied to single-premium policies. But if they are controlling, no computation which ignores the prepaid insurance can be sanctioned. The value under the 1933 Regulations is definitely more than the aggregate cash surrender value of $161,965, for which respondents contend, and can be ascertained upon remand. It is probably not significantly less than the value of $171,426 for which the Government contends.

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[4] See G. C. M. 13147, XIII–1 Cumulative Bulletin 358 (1934).

[5] Although the donor is now deceased, it is not permissible to depart from her life expectancy at the dates of the gifts. *Ithaca Trust Co.* v. *United States*, 279 U. S. 151.

CONCLUSION

The judgment of the Circuit Court of Appeals upon the issue of valuation should be reversed.

Respectfully submitted.

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